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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/220,955	12/28/1998	DONALD WAYNE FEDYK	77682-17	5397

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DALLAS, TX 75380

EXAMINER

DUONG, DUC T

ART UNIT	PAPER NUMBER
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2663

DATE MAILED: 01/12/2004

13

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/220,955

Applicant(s)

FEDYK ET AL.

Examiner

Duc T. Duong

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 November 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 8, 11, 12 and 21-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 21 and 25-29 is/are allowed.
- 6) ☒ Claim(s) 22-24 is/are rejected.
- 7) ☒ Claim(s) 8, 11 and 12 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Response to Amendment***

1. Regarding to the amendment filed on June 9, 2003, claims 8, 11, 12, and 21-29 remains pending.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 22-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Kelly et al (U.S. Patent 4,862,496).

Regarding to claim 22, Kelly discloses a method for a node F (Fig. 4) to select a gateway from among at least two gateways I's, comprising the steps of storing information associating a metric (capacity) with each gateway with respect to each of one or more destinations (col. 3 lines 21-24); upon receiving a connection request to a destination (col. 2 lines 58-60), the further steps of deterministically selecting a first gateway having an optimum metric with respect to the destination (col. 3 lines 40-48); sending a connection request to the first gateway (col. 3 lines 19-21); if a connection can not be established to the destination via the first gateway, randomly selecting a second gateway from among the gateways other than the first gateway, and sending a connection request to the second gateway (col. 8 lines 14-24); and wherein if more than one gateway have the optimum metric with respect to the destination, the step of

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deterministically selecting a first gateway randomly selects the first gateway from among the gateways having the optimum metric (col. 8 lines 24-27).

Regarding to claims 23 and 24, Kelly discloses a method for a node F (Fig. 4) to select a gateway from among at least two gateways I's, comprising the steps of storing information associating a metric (capacity) with each gateway with respect to each of one or more destinations (col. 3 lines 21-24); upon receiving a connection request to a destination (col. 2 lines 58-60), the further steps of deterministically selecting a first gateway having an optimum metric with respect to the destination (col. 3 lines 40-48); sending a connection request to the first gateway (col. 3 lines 19-21); if a connection can not be established to the destination via the first gateway, randomly selecting a second gateway from among the gateways other than the first gateway, and sending a connection request to the second gateway (col. 8 lines 14-24); and wherein the step of randomly selecting a second gateway is repeated if a connection cannot be established via the second gateway first selected randomly (col. 8 lines 24-31), and the selection is limited to the gateways through which a connection has not already been attempted (col. 8 lines 52-67).

***Allowable Subject Matter***

4. Claims 8, 11, and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
5. Claims 21 and 25-29 are allowed.

***Response to Arguments***

6. Applicant's arguments filed November 17, 2003 have been fully considered but they are not persuasive. Regarding to Applicant's argument that Kelly fails to teach "deterministically selecting a first gateway having an optimum metric with respect to the destination" is directed to col. 3 lines 40-48. Herein, Kelly discloses a newly alternative route (first gateway) of a plurality of alternative routes is chosen as the nominated current alternative current alternative route based on any desired criteria. On col. 3 lines 49-52, Kelly discloses if the newly chosen alternative route is unavailable, another newly alternative (second gateway) is chosen. Regarding to Applicant's argument that Kelly fails to teach "if more than one gateway have the optimum metric with respect to the destination, the step of deterministically selecting a first gateway randomly selects the first gateway from among the gateways having the optimum metric" is directed to col. 5 lines 61-64. Herein, Kelly discloses the choice of a new current alternative route is chosen randomly.

***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

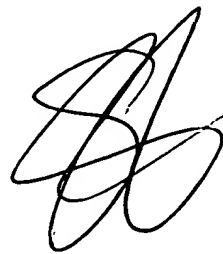
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Duc T. Duong whose telephone number is 703-605-5146. The examiner can normally be reached on M-Th (8:30 AM-5:30 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau T. Nguyen can be reached on 703-308-5340. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9314 for regular communications and 703-872-9314 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-9600.

DD

December 29, 2003

A handwritten signature in black ink, consisting of stylized, overlapping loops and curves, positioned above the printed name.

STEVEN H.D NGUYEN  
PRIMARY EXAMINER